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SUBJECT: TURKEY'S CONSTITUTIONAL COURT PRESIDENT RETIRES:
SEZER TO FILL VACANCY

Classified By: Acting Political Counselor Kelly Degnan for reasons 1.4(b), (d)

¶1. (U) Summary. Turkey's Constitutional Court President Tulay Tugcu will retire on June 12, opening the way for President Sezer to appoint a new justice to the high court. Sezer will fill the vacancy by choosing from among three nominees yet to be selected by the Council of State (Danistay). Current court vice president Hasim Kilic will step in as acting president until the Constitutional Court elects a new president from among its 11 members. Tugcu, the court's first female president, has presided over several controversial decisions since taking the top job in 2005, including the May 1 ruling that invalidated parliament's first round of voting for president. End Summary.

¶2. (SBU) The time-consuming process of selecting a new justice and electing a court president may leave Kilic running the court for some time. According to Koksal Toptan, parliament's justice committee chairman, the Council of State's General Assembly must convene and agree on the three names to submit to Sezer to fill the vacancy created by Tugcu's departure. If the court waits to elect its next president until the new justice is appointed, rather than having an alternate justice sit in temporarily for the vote, Kilic could remain as acting president for weeks. Toptal noted that Kilic, who has served on the court since 1991 and is known for less hardcore secular positions than his colleagues, may delay the election until after a ruling on a voting rights case brought by the court's four alternate jurists. In May, Tugcu rejected the four judges' request to expand their limited voting rights to include election of the court's president. Their challenge to her ruling is pending in an administrative court.

¶3. (C) Kilic is one of four jurists reportedly favored by court members for the presidency. He was appointed by Turgut Ozal in 1991, over the objection of the Istanbul and Ankara Bar Associations, and has served as vice president since 1999. His vote against the closure of the Islamist-oriented Refah Party in 2001 and his wife's headscarf added to his reputation as a conservative. Others reportedly in the running are Fulya Kantarcioglu, who moved to the Constitutional Court from the Council of State in 1995; Ahmet Akyalcin, who joined the high court in 2000 and also serves as president of the Court of Jurisdictional Disputes; and Mehmet Erten, who moved to the Constitutional Court in 2002 after a career as a prosecutor and criminal law judge.

¶4. (C) Tugcu snatched the presidency from Kilic in 2005, when

Kilic, reportedly Erdogan's preferred nominee, withdrew his candidacy after 58 rounds of voting. Tugcu was appointed to the court in 1999 by Suleyman Demirel after seven years as a Council of State member. Known as a staunch secularist, Tugcu reaffirmed her commitment to confronting Islamic elements in Turkish society in her first public statement as president and vowed to uphold Kemal Ataturk's reforms and principles. She voted to ban the Refah Party in 2001 and later ruled that Erdogan could not serve as Justice and Development Party (AKP) chairman because of his conviction under Turkey's penal code. In 2005, she rejected an AKP plan to allow parliament to elect several Constitutional Court jurists for fear that it would politicize the court, and voted in favor of a controversial five-year political ban for an MP who insisted on wearing her headscarf in parliament. Tugcu may be remembered most for presiding over the ruling that a quorum of 367 MPs is required for presidential elections; the May 1 decision invalidated the first round of voting for FM Gul's presidency and forced the government to call for early elections now set for July 22.

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